

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF
JOE TODD,
License No. 1659414, and
Marks Funeral Home, Respondents**

A.I.D. ORDER NO. 2020- 57

ORDER

On this day, the matter of Joe Todd and Marks Funeral Home came before Alan McClain, Arkansas Insurance Commissioner (“Commissioner”). A hearing was held at 10:00 a.m. on October 8, 2020 in the Riverview Room of the Arkansas Department of Commerce, pursuant to the Notice of Public Hearing dated September 9, 2020. The hearing was held before Managing Attorney Booth Rand (“Hearing Officer”) pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Arkansas Insurance Department was represented by Amanda Gibson, Associate Counsel.

FINDINGS OF FACT

1. Respondent Joe Todd (“Todd”) holds a Funeral Expense license, number 1659414.
2. Todd currently resides in Magnolia, which is also the location of Marks Funeral Home.
3. Respondent Marks Funeral Home (“Marks”) holds a prepaid funeral benefits permit.
4. Todd’s Funeral Expense license lapsed on March 25, 2018.
5. On February 28, 2019, the Department entered Order No. 2019-11. That order required Todd to pay a monetary penalty in the amount of \$1,428.06. That amount represents the amount of commissions which were earned illegally on policies written by Todd, after the expiration of his Funeral Expense license.

6. The order required payment of the penalty by August 28, 2019.
7. Todd has failed to pay the monetary penalty.
8. Marks' second quarter 2019 quarterly report was filed late. The report was due August 15, 2019, and it was filed August 30, 2019.
9. The penalty for the late filing of the second quarter 2019 report is \$250.
10. Marks has failed to pay the penalty for the second quarter 2019 report.
11. The first quarter 2020 report was due May 15, 2020.
12. Marks failed to file the first quarter 2020 report, resulting in a \$250 penalty which remains unpaid.
13. Marks filed the second quarter 2020 report, but it was one day late, resulting in a \$25 penalty that remains unpaid.
14. On July 31, 2020 the Department was made aware of the fact that Marks owes money to another funeral home.
15. Specifically, there were two decedents who had prepaid contracts with Marks Funeral Home, but at the time of death, at-need services were performed by R.L. Reed Funeral Home ("Reed").
16. The first decedent, Lee Jewell Shepherd, has a prepaid balance with Marks of \$2,000. Reed performed services for that decedent on February 2, 2019.
17. The second decedent, Thurman Jackson, has a prepaid balance with Marks of \$4525. Reed performed services for that decedent on June 15, 2019.
18. Marks has either refused or failed to forward to Reed, the prepaid funds that were collected from the consumers.

CONCLUSIONS OF LAW

1. Ark. Code Ann. §§ 23-61-101, *et seq.*, assigns the responsibility for administration of the Arkansas Insurance Code to the Arkansas Commissioner of Insurance (hereinafter referred to as the “Commissioner”). The Department is the lawful agency through which the Commissioner administers the Arkansas Insurance Code, and the Department is authorized to bring this action for the protection of Arkansas consumers.
2. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §§ 23-40-101, *et seq.*, and 23-61-103.
3. The Arkansas Producer Licensing Model Act, codified at Ark. Code Ann. § 23-64-501 *et seq.*, governs Todd’s Funeral Expense license.
4. More specifically, Ark. Code Ann. § 23-64-506(e)(1) requires that in order to obtain or renew a producer’s license, the producer “must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.” Further, Ark. Code Ann. § 23-64-506(e)(2) provides that “qualifications for licensure under this section must continue in order to remain licensed.”
5. Ark. Code Ann. § 23-64-512(a) allows the Commissioner to “place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes: ...(2) Violating any of the following that calls into question the insurance producer’s fitness to hold a license:... (B) A regulation, subpoena, or *order of: (i) the Commissioner...*” (emphasis added).

6. Ark. Code Ann. § 23-64-512(e) provides that “The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this subchapter and the Arkansas Insurance Code against any person who is under investigation for or charged with a violation of this subchapter or the Arkansas Insurance Code, even if the person’s license or registration has been revoked, surrendered or has lapsed by operation of law.”
7. Ark. Code Ann. §§ 23-40-101, *et seq.*, assigns the responsibility for administration of the Arkansas Prepaid Funeral Benefits Law to the Commissioner. The Department is the lawful agency through which the Commissioner administers the Arkansas Prepaid Funeral Benefits Law.
8. Ark. Code Ann. § 23-40-111(a)(2) requires the permit holder to “be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.”
9. Ark. Code Ann. § 23-40-119(d)(1)(B) and (C), and (e), require the quarterly reports and fees to be filed, and provides for the levy of a late penalty for any untimely filings, and for the failure to submit the filings.
10. Todd’s conduct as detailed in Findings of Fact 5 through 7 above, is in violation of Ark. Code Ann. § 23-64-512(a)(2) in that he is in violation of the Department Order No. 2019-11 requiring payment of the monetary penalty levied on his Funeral Expense license.
11. Marks’ conduct as detailed in the Findings of Fact 8, 10, 12 and 13 above, are in violation of Ark. Code Ann. § 23-40-119(d)(1)(B) and (C), and (e), requiring quarterly reports be filed and authorizing late fees for delinquent or missing reports.
12. Marks’ conduct as detailed in the Findings of Fact 8, 10, 12, 13, and 18 above, show that it does not meet the criteria contained in Ark. Code Ann. § 23-40-111(a)(2) which requires the

organization to “be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.”

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That Respondent Todd be ordered to comply with Department Order 2019-11 by remitting to the Department, the monetary penalty of \$1,428.06.
2. That Respondent Marks be ordered to pay the late fees from the missing and delinquent reports, totaling \$525.
3. That Respondents be ordered to pay restitution to R.L. Reed Funeral Home in the amount of \$6525.
4. That Respondent Joe Todd’s funeral expense license should be revoked.
5. That Respondent Marks Funeral Home’s prepaid funeral benefits permit should be revoked.


Booth Rand, Managing Attorney
and Hearing Officer

CERTIFICATION

I, Alan McClain , Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Booth Rand, Managing Attorney and Hearing Officer, in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation in full, as set forth herein.

THEREFORE, as recommended by the Hearing Officer, it is hereby ORDERED:

1. That Respondent Todd comply with Department Order 2019-11 by remitting to the Department, the monetary penalty of \$1,428.06.
2. That Respondent Marks pay the late fees from the missing and delinquent reports, totaling \$525.
3. That Respondents pay restitution to R.L. Reed Funeral Home in the amount of \$6525.
4. That Respondent Joe Todd's funeral expense license is REVOKED.
5. That Respondent Marks Funeral Home's prepaid funeral benefits permit is REVOKED.

IT IS SO ORDERED THIS 8th DAY OF OCTOBER, 2020.


ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS